

**IN THE UNITED STATES DISTRICT COURT
OF THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

STEVEN R. WHATLEY,
Plaintiff

V.

JO ANNE B. BARNHART,
Commissioner of Social
Security Administration,
Defendant

§
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§
§

No. 5:04CV187

ORDER ADOPTING REPORT AND RECOMMENDATION

The above-entitled and numbered civil action was heretofore referred to United States Magistrate Judge Caroline M. Craven pursuant to 28 U.S.C. § 636. The Report of the Magistrate Judge which contains her proposed findings of fact and recommendations for the disposition of such action has been presented for consideration. No objections to the Report and Recommendation were filed. The Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct. Therefore, the Court hereby adopts the Report of the United States Magistrate Judge as the findings and conclusions of this Court. Accordingly, it is hereby

ORDERED that Commissioner's Unopposed Motion to Reverse With Remand for Further Administrative Proceedings (Dkt. No. 11) is **GRANTED**. It is further

ORDERED that this case is reversed and remanded under the fourth sentence of the Social Security Act, 42 U.S.C. § 405(g), to the Commissioner of the Social Security Administration for further administrative proceedings before an Administrative Law Judge ("ALJ"). It is further

ORDERED that on remand an ALJ will properly evaluate Plaintiff's mental residual functional capacity. The ALJ will also evaluate the opinion of Plaintiff's treating physician, Dr.

Scott Kemp, in accordance with 20 C.F.R. §§ 404.1527(d), 416.927(d), and *Newton v. Apfel*, 209 F.3d 448, 453 (5th Cir. 2000). Furthermore, the ALJ will obtain VE testimony to clarify the effect of Plaintiff's nonexertional limitations upon his occupational base. It is further

ORDERED that all motions not previously ruled on are **DENIED**, and the referral order is **VACATED**.

SIGNED this 12th day of July, 2005.

A handwritten signature in black ink, appearing to read "David Folsom", written over a horizontal line.

DAVID FOLSOM
UNITED STATES DISTRICT JUDGE